FRONT Report LINE

May 1995 OFFICE OF MISSOURI ATTORNEY GENERAL Vol. 2, No. 2

Photo not available

AG-PATROL BENEFIT

AG **Jay Nixon**, second from right, and assistant attorney **Norm Siegel**, left, present Highway Patrol Sgt. **Rusty Bourg**, right, and recruit **Darren Juntunen** with $1,270 raised in a benefit basketball game. The AGO won, 91-66. Nixon and the AG players raised more than $800 from co-workers, with the rest collected at the game. The benefit was held for Patrolman Jerry West and his wife. Their car was hit head-on by a drunken driver. Susan West remains hospitalized.

To schedule a benefit basketball game with the AG's Office, contact Rose Mertens at 314-751-3321

Escape rule

Supreme Court adopts test in applying rule

The Missouri Supreme Court recently adopted an "escape rule" test that helps clarify when law enforcement officials can deny escapees their right to appeal. The test may require more communication and cooperation among law enforcement agencies.

Under the escape rule, individuals who have been convicted of offenses and have escaped, may forfeit their right to pursue direct appeals or other attacks on their convictions or sentences.

However, there has been some confusion over what test to use to determine whether the escape rule should be applied in Missouri.

In *State v. Troupe,* 891 S.W.2d 808 (Mo.banc 1995), the state Supreme Court made it clear Missouri did not follow the test discussed by the U.S. Supreme Court in

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Tougher juvenile laws will help law officers

Improvements in state juvenile laws will help law enforcement officials deal more effectively with the reality of violent juveniles, AG **Jay Nixon** said following the 1995 legislative session.

Nixon joined with law officers

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throughout Missouri to call for tougher juvenile laws prior to the 1995 session.

Nixon noted these important changes in the juvenile code:

- Certification hearings must be held for juveniles who commit one of the "seven deadly sins," including murder, rape and armed robbery.
- For the first time, juvenile officers may provide information about

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Monitoring cordless phones now prohibited

The Digital Telephone Act of 1994 has been amended under the federal wiretap statutes (18 U.S.C. §2510) to include monitoring of cordless telephone communications as wiretapping.

It always has been illegal to monitor cellular or mobile telephones. However until now, cordless telephone transmissions between the cordless phone and the base unit were legal and could easily be monitored through commercially sold scanners.

Also, past law enforcement seminars have taught officers how to use monitoring devices to listen to cordless phone conversations.

However, officers who now monitor cordless phone communications would be subject to possible criminal and civil penalties for wiretapping.

FOR INFORMATION

Call Thomas J. O'Malley, who is with Electronic Surveillance United, Office of Enforcement Operations, U.S. Department of Justice:

202-514-6809

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juvenile delinquents to law enforcement, school officials and prosecuting attorneys without juvenile court permission.

- The Division of Youth Services no longer is required to release juveniles on their 18th birthday, but can retain custody for treatment purposes up to age 21.
- When a juvenile has been transferred to the adult system, tried and convicted, the sentencing court has authority to sentence the juvenile to the Department of Corrections, but suspend execution of that sentence and require the juvenile to complete treatment within the custody of DYS.
- Police must fingerprint and photograph juveniles taken into custody for offenses that would be felonies if committed by adults.

ESCAPE RULE

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Ortega-Rodriguez v. United States, 113 S.Ct. 1199 (1993), which applies to federal courts.

That test focuses on whether the escape adversely affects the **process of litigating the defendant's appeal,** and makes it harder for an appeal to be dismissed in federal court.

The state Supreme Court made it clear in *Troupe* that appeals may be dismissed if an escape causes an "adverse effect" on the **criminal justice system.** It is reasonable to argue that an adverse effect may occur if law enforcement agencies spend resources to hunt for an escapee, even if the escape lasts for only a short time.

However, prosecutors are not always aware of escapes or the full effect escapes have on the criminal justice system.

Law enforcement agencies should notify prosecutors of escapes, so they can attempt to invoke the escape rule in future proceedings. Officials also should document adverse effects caused by an escape: For example, record the amount of time, money and staff it took to recapture the escapee. This information can help prosecutors apply the rule.

Dispatching a deputy to look for a defendant who skipped bond or failed to attend a hearing may be enough of an adverse effect to justify denying a defendant the right to appeal his conviction, even if the "escape" lasted only a few hours.

Front Line Report is published on a periodic basis by the Office of the Missouri Attorney General, and is distributed to law enforcement officials throughout the state.

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UPDATE: CASE LAWS

U.S. SUPREME COURT

Arizona V. Evans
56 Crim.Law Rptr. 2173
March 1, 1995

The exclusionary rule did not require suppression of evidence seized when the defendant was arrested during a routine traffic stop after the patrol's computer indicated there was an outstanding misdemeanor warrant for his arrest. The warrant, however, already had been quashed.

The court said the exclusionary rule does not require suppression of evidence seized in violation of the Fourth Amendment when the erroneous information resulted from clerical errors by court employees. The exclusionary rule is a judicially created remedy. The court applied the rule of ***United States v. Leon,*** 468 U.S. 897 (1984), which declined to apply the exclusionary rule as a means of determining misconduct by judicial officers responsible for issuing search warrants.

MISSOURI SUPREME COURT

State v. Ralph L. Miller
No. 76803
Mo.banc, Feb. 21, 1995

The trial court improperly overruled a motion to suppress evidence based upon an illegal Terry stop. A detective informed a police officer by portable phone that narcotics were being transported in the Columbia area. The officer later relayed the information in person to another officer. That officer was told that a vehicle belonging to Ramona Tope would be transporting controlled substances and where the car would be located. The car and license plate were described.

Because the detective did not testify at the suppression hearing, it was unknown whether he knew or suspected the car would be transporting narcotics.

An officer stopped the vehicle and asked the driver for consent to search the car, to which she ultimately agreed. The defendant, who also was in the car, became agitated and continued to produce identification. He then placed his hands in his jeans.

When an officer saw an object in the defendant's fist, the defendant denied he held anything and then placed the object in his pocket.

The officer reached into the pocket and retrieved a bowl containing cocaine residue.

After the defendant was arrested, he made a statement of his knowledge about the cocaine. Based on United States v. Hensley, 469 US 221 (1985), the court found that the state improperly produced no evidence of the origin of the tip other than the defendant's post-arrest statements.

In the statement, the defendant stated he believed his ex-girlfriend had provided the tip. The court refused to hold that the defendant's statement obtained as a result of a stop that otherwise would be illegal justified the admission of evidence.

The court emphasized there was no evidence identifying who would be in the vehicle allowing corroboration of a travel route, or giving an exact location for the vehicle. The corroboration of a police communication that predicted a car might, at some undetermined time, be near the appellant's residence does not provide a reasonable suspicion standard. The court also noted the state failed to prove the legality of the stop.

State v. Jahn Henri Parker
886 S.W.2d 908 (Mo.banc, 1994)

The trial court did not err in limiting the defendant's review of personnel records of police officer witnesses. The defendant made no showing about the materiality or exculpatory nature of officers' files. The mere possibility that a personnel file might include helpful information is not sufficient to justify producing the files. The trial court inspected all

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Overtime clarified

A December 1994 article discussed how many employees a law enforcement agency must employ for the overtime provisions of the Fair Labor Standards Act to apply. The article erroneously stated that the overtime provisions apply when an employee works more than 40 hours per week.

For law enforcement officers, the FLSA requires overtime compensation — either as pay or time-and-a-half compensatory time — if the officer works more than 171 hours in a 28-day period. Compensation is **not** affected by the number of hours worked each week, but by the number of hours worked each month.

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records within the scope of the showing of materiality, with a reasonable margin of time before and after.

SOUTHERN DISTRICT

State v. Facundo Valdez
886 S.W.2d 182
(Mo.App., S.D., 1994)

The trial court did not err in denying a motion to suppress evidence based on a stop of the defendant's vehicle. The defendant's consent to search was lawful and the court found no extended detention after issuance of a ticket, which would have invalidated the consent.

Evidence indicated the defendant was in a patrol car for seven or eight minutes; the request to search was made 10 to 15 minutes after the initial stop. There is no evidence the detention exceeded the time reasonably necessary to effectuate the purpose of the stop, or that the consent resulted from the length of the detention or the way it was conducted by a trooper.

State v. Henrietta Tidwell
888 S.W.2d 736
(Mo.App., S.D., 1994)

The court found exigent circumstances that justified entering the defendant's home without a warrant. When a police officer entered the home, he already had seen the defendant's dead sister in the yard. The police saw lacerations on the victim's head and blood when they arrived. When the police confronted the defendant and asked whether anyone was inside, the defendant did not reply. Circumstances warranted the lawful entry without a warrant to determine whether:

- There were other victims needing help, or
- The killer was inside, potentially endangering the officers and possibly the defendant.

The court therefore did not err in refusing to suppress items seized and photographs taken inside the house.

State v. Baker E. Bigsby
No. 19325
Mo.App., S.D., Jan. 17, 1995

There was sufficient evidence to convict the defendant of trafficking drugs in the second degree. Circumstantial evidence proved the defendant knew marijuana was in the pickup truck he was driving. The defendant had exclusive possession of the truck for 24 hours immediately preceding his arrest.

He claimed he intended to take the truck to California. However, when a trooper stopped him, he was not on a direct route between the city from which he started and the city in which he planned to visit. Also, the truck was not registered in the name of the defendant or of a friend who the defendant claimed provided him the vehicle.

The court also found that the defendant voluntarily consented to a trooper to search the truck. The court rejected the defendant's argument that he did not know he had the right to refuse the search request and that the trooper did not inform him of this right. An effective consent to search is not conditional on knowledge of a right to refuse the search. Also, when the trooper asked for permission to search, the defendant said he believed the officer had that right. The trooper immediately replied that he was not saying he had the right to search the pickup but that he was asking for permission to search.

EASTERN DISTRICT

State v. Larry Wilkes
No. 65440
Mo.App., E.D., Jan. 31, 1995

The court reversed the conviction of stealing over $150 because there was insufficient evidence that an air conditioner was valued over $150.

The state presented evidence to prove the value:

- pictures of the air conditioner
- testimony that the air conditioner worked before the crime
- the air conditioner was 5 years old
- the cost of labor and materials to replace the air conditioner was $700 to $1,000;
- The owner spent $140 for labor and materials to repair wires and tubing on the air conditioner as a result of damages allegedly sustained by the defendant.

The court noted there was no direct evidence of market value at the time of the crime. Further, no evidence was presented that the market value was ascertainable.

Relying on *State v. Jones,* 843 SW2d 407 (Mo.App., E.D. 1992), there was insufficient evidence because the state failed to present evidence that the

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property could not have been appraised. For purposes of Section 570.030.3(1), value is defined as "the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime." See Section 570.020(1).

State v. Nathaniel M. Richardson
No. 886 S.W.2d 175
(Mo. App., E.D. 1994)

There was sufficient evidence of the defendant's guilt of unlawful use of a weapon. The defendant contended the state did not present any evidence that a gun was loaded and operational. The court rejected the defendant's argument that a weapon is not "readily capable of lethal use" unless it is loaded. Substantial circumstantial evidence was presented that a shotgun was loaded.

WESTERN DISTRICT

State v. Richard E. Hill
No. W.D.48542
Mo. App. W.D. Jan. 17, 1995

The defendant failed to meet his burden in requesting disclosure of a confidential informant. The informants were present at the narcotics sale, which alone did not mandate disclosure.

When informants actively participate, there is a greater likelihood fundamental fairness will require disclosure of identity, as distinguished from when they merely provide information.

Although participation is a major factor for the trial court to consider, participation alone does not always mandate disclosure. The court must balance the relevance of disclosure and the importance to the defense against the state's need for nondisclosure.

There were no other factors such as mistaken identity, contradictory testimony, denial of the accusation, or the fact that the informant was the sole witness to the crime charged.

State v. Richard Shannon
No. W.D. 49368
Mo. App., W.D., Jan. 10, 1995

The court found that the defense of outrageous governmental conduct did not apply. The court refused to apply this defense in a situation where police allegedly provided alcohol to the defendant.

Also, the actions in which police provided transportaton for the defendant and suggested the defendant try to negotiate a lower price for a drug transaction were not outrageous. These were efforts by the officer to maintain control of the situation, to maintain his cover and to keep his identity concealed.

The court said the officer's action allowing the defendant to use and take a small portion of methamphetamine was a necessary part of the undercover operation.

Factors tending to show outrageous conduct by police include:

- Manufacturing a crime that otherwise would not have occurred.
- Engaging in criminal conduct.
- Appealing to humanitarian instincts, temptation of exorbitant gain or persistent solicitation to overcome the defendant's unwillingness to engage in an illegal activity.
- Desiring to obtain a conviction of the defendant without motive to prevent further crimes or to protect the public.

The defense of outrageous conduct will not apply if none of the evidence incriminating the defendant was obtained by the conduct he complained about, or if that conduct did not form the basis for the charges against him.

In drug prosecutions, this defense will not apply if the activity to which the defendant objects involves "acceptable practice of law enforcement."

Acceptable practices include using paid informants who are drug users; supplying informants with money to buy drugs from a defendant; and allowing informants to use some of the drugs purchased from the defendant.

State v. Willie R. Mayes
No. 884 S.W.2d 405
(Mo.App. W.D. 1994)

A detective was allowed to testify as a narcotics expert. The detective testified, without objection, about PCP production in clandestine labs in California, the forms of PCP in purity levels, and how PCP is sold and priced.

Relying on *State v. King,* 865 SW2d 845 (Mo.App. 1993), the court noted that trial judges have much discretion in determining whether expert testimony is appropriate.

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148 warrants cleared in second sting operation

A sting operation conducted by Attorney General **Jay Nixon** and Clay County Sheriff **Robert Boydston** resulted in the arrest of 29 fugitives and clearance of 148 arrest warrants.

During the five-day sting in March, $62,237 was posted in bond. The sting attracted fugitives from six states.

The Sheriff's Department first sent a letter to individuals wanted on outstanding warrants, directing them to clear the warrants. This resulted in clearing 119 warrants; 56 for felons.

The AG's Office then sent fictitious letters to fugitives informing them they were eligible for cash awards resulting from a class-action lawsuit by the AG's Office. The fugitives were instructed to set up appointments to collect their checks.

OPERATION LAM SCAM

Law enforcement agencies interested in conducting their own stings can call attorney **John Watson** at 314-751-0380.

Breakdown of warrants

The Clay County Sheriff's Department cleared 148 warrants during the sting.

A temporary claims office was set up in North Kansas City. Undercover sheriff's officers acted as receptionists and office staff. Deputies made arrests in a back room.

"Tracking down and apprehending a fugitive is one of the most dangerous aspects of our work," Boydston said. "This operation allowed us to bring them into a controlled environment where arrests were safely made."

Nixon said, "The high degree of professionalism demonstrated throughout this operation is a credit to Sheriff Boydston, the fugitive team and the entire department."

This was the second Operation Lam Scam conducted by the AG's Office and a sheriff's department. In November, 218 warrants were cleared in Jefferson County.